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JEANNE HICKS, Clerk  
BY E. ROE Deputy

IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

STEVEN CARROLL DEMOCKER,

Defendant.

Cause No. P1300CR20081339

Division 6

MOTION REGARDING SEQUESTERED  
VOIR DIRE DURING JURY SELECTION

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Motion Regarding Sequestered Voir Dire During Jury Selection. The State's position is supported by the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

The decision whether sequestration of each venire person during voir dire is required is at the discretion of the judge. *State v. Canez*, 202 Ariz. 133, 148, 42 P.3d 564, 597 (2002) (the method and scope of voir dire is left to the discretion of the trial judge). The issue of individual sequestration arises at nearly all capital cases. In determining whether to close the courtroom during certain portions of a criminal trial:

[A] judge must make a case-specific determination that closure is necessary. That "determination must satisfy four

requirements articulated by the Supreme Court: '[1] the party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced, [2] the closure must be no broader than necessary to protect that interest, [3] the trial court must consider reasonable alternatives to closing the proceeding, and [4] it must make findings adequate to support the closure.' "

*Commonwealth v. Cohen*, 921 N.E.2d 906, 918 (Mass. 2010) (citations omitted).

The closing of a criminal proceeding to the public may implicate rights guaranteed by both the First and Sixth Amendments to the United States Constitution. The First Amendment implicitly grants the public, including the press, a right of access to court trials. The Sixth Amendment expressly grants criminal defendants the right to a public trial.

*Id.* at 917-18.

In *Hovey v. Superior Court of Alameda County*, 616 P.2d 1301 (1980), the California Supreme Court held that the portion of voir dire dealing with issues involving death-qualifying the jury required individual sequestration. "*Hovey* reasoned that jurors were influenced by observing the death qualification of their fellow venire-persons." *Covarrubias v. Superior Court of Monterey County*, 71 Cal.Rptr.2d 91, 93 (1998). While not overruled, the holding in *Hovey* was superseded by statute, *Cal. Code of Civil Procedure*, § 223, as stated in *Covarrubias*. Section 223 provided that where practicable, voir dire of potential jurors should "occur in the presence of other jurors in all criminal cases, including death penalty cases." *Covarrubias* at 93.

Section 223 was part of Proposition 115, the Crime Victims Justice Reform Initiative, which "was adopted to make 'comprehensive reforms ... in order to restore balance and fairness to our criminal justice system.'" *Covarrubias* at 95 (citations omitted). Individual sequestration during voir dire "unnecessarily add[ed] to the costs of criminal cases ... diverting the judicial process from its function as a quest for the truth." *Id.* The *Covarrubias* court

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1 determined that in passing Section 223, the "electorate believed that in all criminal cases,  
2 including death penalty cases, it *could* be practicable to utilize large group voir dire." *Id.* at 98.

3 Here, the fact that there may be a *slight* opportunity for any prospective juror to  
4 consider and formulate his or her own response to any given question based upon what has  
5 been asked and answered is not sufficient cause to sequester each venire person individually.  
6 Also, the opportunity to consider the issue at hand can be useful to all concerned. As we have  
7 already experienced in this case, when a prospective juror has the opportunity to consider the  
8 issues, conflicts will surface more quickly and those persons can be excused for hardship or  
9 cause before a great deal of time and effort is expended.

11 **CONCLUSION:**

12 The Court should not require individual sequestration of each venire person during voir  
13 dire. The process will unnecessarily consume time and resources and is not in the best interest  
14 of judicial expediency. When personal issues arise with individual jurors, the matter can easily  
15 be heard in chambers.

17 RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of April, 2010.

20 Sheila Sullivan Polk  
YAVAPAI COUNTY ATTORNEY

22 By: 

23 Joseph C. Butner  
24 Deputy County Attorney

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COPIES of the foregoing delivered this  
28<sup>th</sup> day of April, 2010 to:

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